IN THE HIGH COURT OF UTTRANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Appeal From Order No. 402 of 2001

Date of decision : 3rd March, 2006

A.F.R. (Approved for Reporting

~~Not Approved for Reporting~~

Date 3.3.2006 Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 402 of 2001
(Old No. 464 of 1985)

Suresh Kumar Sood,
S/o Sri Hari Chand Sood,
R/o Bifurcation, Pilibhit. ……. Appellant

Versus

1. Smt. Munni Begum,
   Widow of Munne Khan.
2. Rayis Minya S/o Munne Khan.
3. Km. Shahana D/o Munne Khan
4. Km. Shabana D/o Munne Khan
5. Kaim S/o Munne Khan
6. Km. Rukshana D/o Munne Khan
7. Firaj S/o Munne Khan
8. Naim S/o Munne Khan
   Respondent Nos 2 to 8 minor through
   Their natural guardian Smt. Munni Begum
   (Respondent No. 1 mother).
   All above R/o Ward No. 1, Khatima.
9. Mahatam Singh, Driver,
   C/o Jain Transport, Bareilly.
10. New India Insurance Co. Ltd.,
    Bareilly. …. Respondents

Mr. Rajendra Dobhal, Advocate representing Mr. Lokendra Dobhal, Advocate for the appellant.
Mr. Deepak Rawat, Advocate for respondent Nos. 1 to 8.
Mr. R.B. Aggrawal, Advocate for respondent No. 10. .

JUDGMENT
Coram: Hon.Rajeev Gupta, C.J.
Hon. M.M. Ghildiyal, J.

RAJEEV GUPTA, C.J. (Oral)

Mr. Rajendra Dobhal, Advocate on behalf of Mr. Lokendra Dobhal, learned counsel for the appellant.

Mr. Deepak Rawat, Advocate for respondents Nos. 1 to 8.

None for respondent No.9.

Mr. R.B. Aggrawal, Advocate for respondent No. 10 New India Insurance Company Ltd.

They are heard.

2. This is owner's appeal against the impugned award dated 22.02.1985 passed by Motor Accident Claims Tribunal (special Judge), Nainital in Motor Accident Claim No. 53 of 1981.

3 The claimants claimed compensation of Rs. 3,26,400/- (Rupees Three Lakhs Twenty Six Thousand and Four Hundred only) for the death of one Munne Khan in the motor accident on 18.12.1980 when the Truck bearing registration No. UPM 9532, in which he was traveling, overturned due to the rash and negligent driving of its driver resulting in his instantaneous death on the spot, itself. The claimants further pleaded that Munne Khan used to earn Rs. 800/- per month by selling milk.

4. The owner of the offending vehicle Truck (appellant) contested the claim and pleaded that deceased Munne Khan was not an occupant of the Truck and as the Truck was insured with the New India Insurance Company Ltd., the owner was not liable to pay compensation to the claimants.

5. The insurer of the Truck i.e. New India Insurance Company Ltd. too contested the claim and pleaded that though the Truck was insured with the Insurance Company, but it was not liable to pay any compensation to the claimants, as the deceased was a gratuitous passenger in a goods' vehicle. It was further pleaded that the driver of the Truck was not holding a valid driving license at the time of the accident.

6. The claimants examined PW1 Munni Begum (widow of deceased Munne Khan) and PW2 Mahendra Singh (who too was traveling in the said Truck with deceased Munne Khan) in support of their case, whereas the owner of the offending vehicle Truck examined DW1 Narayan Mathur in support of his plea. The Insurance Company, however, did not examined any witness.

7. The Tribunal, on the evidence led by the parties, held that deceased Munne Khan was traveling in the Truck as a gratuitous passenger; he died on account of the injuries sustained by him in the accident; the accident occurred due to rash and negligent driving of the driver of the Truck; and as deceased Munne Khan was traveling as a gratuitous passenger in a goods' vehicle, the Insurance Company was not liable to pay compensation to the claimants. Considering the age of deceased Munne Khan and the evidence led by the claimants about his income, the Tribunal awarded compensation of Rs. 74,200/- (Rupees Seventy Four Thousand and Two Hundred only) to the claimants and, while exonerating the Insurance Company, the owner of the Truck i.e. the appellant was directed to pay compensation to the claimants.

8. Mr Rajendra Dobhal, Advocate on behalf of Mr. Lokendra Dobhal, learned counsel for the appellant vehemently argued that the Tribunal erred in discarding the evidence of the appellant's witness DW1 Narayan Mathur; in holding that deceased Munne Khan was traveling in the Truck; and in exonerating the Insurance Company from its liability to pay compensation to the claimants.

9. Mr. R.B. Aggrawal, learned counsel for the New India Insurance Company, on the other hand, supported the award and submitted that the view taken by the Tribunal in exonerating the Insurance Company is in line with the Apex Court dictum in the case of **New India Assurance Company Ltd. Vs. Asha Rani** reported in **2003 ACJ 1** and the subsequent judgments on the subject.

10. Mr. Deepak Rawat, learned counsel appearing on behalf of respondent Nos. 1 to 8 (cliamants) too vehemently argued that the Insurance Company has been wrongly exonerated by the Tribunal.

11. The Tribunal has relied upon the evidence of PW2 Mahendra Singh in holding that deceased Munne Khan was traveling in the

appellant's Truck and died on account of the injuries sustained by him in the accident when the Truck overturned due to the rash and negligent driving of the driver of the Truck.

12. True, appellant's witness DW1 Narayan Mathur too claims to be in the same Truck. On a close scrutiny of the evidence of DW1 Narayan Mathur, we are satisfied that the Tribunal has rightly discarded his evidence. In fact, the appellant ought to have examined the driver of the Truck who was the best person to narrate as to how the accident occurred. For the reasons best known to the appellant, the driver was not examined before the Tribunal. The evidence of PW2 Mahendra Singh who was traveling in the same Truck with deceased Munne Khan does not suffer from any infirmity whatsoever. Though he was subjected to a lengthy cross-examination by the owner of the Truck, nothing could be elicited in his cross-examination which may render his evidence unworthy of evidence. The Tribunal has given cogent reasons for relying upon the evidence of PW2 Mahendra Singh in preference to the evidence of DW1 Narayan Mathur. On a thorough examination of the evidence of PW2 Mahendra Singh and DW1 Narayan Mathur, we do not find any reason for taking a different view about their evidence than the one taken by the Tribunal.

13. The appellant's next submission that the Tribunal has erred in exonerating the Insurance Company from its liability to pay compensation to the claimants, need to detain us any more, as the said issue stands finally decided by the Apex Court in the case of **New India Assurance Company Ltd. Vs. Asha Rani** reported in **2003 ACJ 1** wherein the earlier view taken in the case of **New India Assurance Co. Ltd. Vs. Satpal Singh** reported in **2000 ACJ 1** was overruled. The view taken by the Apex Court in the case of Asha Rani has been consistently followed in the cases of National Insurance Company Ltd. Vs. Ajit Kumar reported in 2003 ACJ 1931; Oriental Insurance Company Ltd. Vs. Devireddy Konda Reddy reported in 2003 ACJ 468; National Insurance Company Ltd. Vs. Baljit Kaur

reported in 2004 ACJ 428; Pramod Kumar Agrawal Vs. Mushtari Begum reported in 2004 in ACJ 1903; and in the case of National Insurance Company Ltd. Vs. Bommithi Subbhayamma and others reported in 2005 ACJ 721.

14. In the present case, there is no dispute that the vehicle in question was goods' vehicle. It has been held by the Tribunal that deceased Munne Khan was a gratuitous passenger in the Truck. Thus, we do not find any infirmity in the finding recorded by the Tribunal exonerating the Insurance Company from its liability to pay compensation and holding the owner of the Truck alone liable to pay compensation to the claimants.

15. The leaned counsel for the appellant then challenged the quantum of compensation assessed by the Tribunal. The finding about the income of the deceased is based on the evidence of PW1 Munni Begum and PW2 Mahendra Singh. The appellant did not adduce any evidence in rebuttal. The Tribunal, therefore, has not committed any illegality in assessing the income of the deceased at Rs. 800/- per month. The Tribunal, in fact, has been somewhat miser in awarding compensation of Rs. 74,200/- (Rupees Seventy Four Thousand and Two Hundred only) only. The deduction of 30% made by the Tribunal on account of the accelerated payment to the claimants, was quite unnecessary. Since the claimants have not filed any appeal or cross objection, we leave this issue here only.

16. Thus, on a re-examination of the entire matter, we are satisfied that the Tribunal has rightly held that deceased Munne Khan was traveling in the appellant's Truck; that he died on account of the injuries sustained by him in the accident; that the accident occurred due to rash and negligent driving of the appellant's driver; that deceased Munne Khan was a gratuitous passenger in the goods' vehicle and as such, the Insurance Company was not liable to pay

compensation to the claimants and the owner of the Truck, alone, was liable in that behalf.

17. As we do not find any infirmity in the finding recorded by the Tribunal, the appeal filed by the appellant against the impugned award fails and is, hereby, dismissed. No order as to costs.

(M.M. Ghildiyal, J.) **(Rajeev Gupta, C.J.)**

03.03.2006 **03.03.2006**

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